GOVERNMENT OF THE DISTRICT OF COLUMBIA
Department of Employment Services

VINCENT C. GRAY
MAYOR

LISA M. MALLORY
DIRECTOR

COMPENSATION REVIEW BOARD

CRB No. 12-059

ROY M. MCNATT,
Claimant–Petitioner,

v.

KOCHHAR, INC./S&S LIQUORS and TRAVELERS INDEMNITY CO.,
Employer/Carrier-Respondent.

Appeal from a Compensation Order on Remand by
The Honorable Gerald D. Roberson
AHD No. 10-417B, OWC No. 669263

Mr. Roy M. McNatt, self-represented Petitioner
Michael E. Ollen, Esquire for the Respondent

Before MELISSA LIN JONES, HEATHER C. LESLIE,[1] and JEFFREY P. RUSSELL,[2] *Administrative Appeals Judges*.

MELISSA LIN JONES, *Administrative Appeals Judge*, for the Compensation Review Board.

DECISION AND ORDER

JURISDICTION

Jurisdiction is conferred upon the Compensation Review Board ("CRB") pursuant to §§32-1521.01 and 32-1522 of the District of Columbia Workers' Compensation Act of 1979, D.C. Code, as amended, §32-1501 *et seq*., ("Act"), 7 DCMR 250, *et seq*., and the Department of Employment Services Director's Administrative Policy Issuance 05-01 (February 5, 2005).

FACTS OF RECORD AND PROCEDURAL HISTORY

In 2009, Mr. Roy M. McNatt worked for Kochhar, Inc./S&S Liquors ("S&S") as a manager. Mr. McNatt stopped working for S&S on April 17, 2009.

[1] Judge Leslie has been appointed by the Director of the Department of Employment Services ("DOES") as a temporary CRB member pursuant to DOES Administrative Policy Issuance No. 11-04 (October 5, 2011).

[2] Judge Russell has been appointed by the Director of the DOES as a temporary CRB member pursuant to DOES Administrative Policy Issuance No. 12-01. (June 20, 2012).

Mr. McNatt alleges he injured himself at work on April 17, 2009. A formal hearing was held before an administrative law judge ("ALJ") to determine whether or not Mr. McNatt is entitled to ongoing temporary total disability benefits as of April 17, 2009. Several issues and defenses were raised for resolution:

1. Did Claimant sustain an accidental injury on April 17, 2009?
2. Did Claimant's injury arise out of and in the course of his employment, and is it medically related to his employment?
3. Did Claimant provide timely notice of an injury, and did he timely file his claim?
4. What is Claimant's average weekly wage?
5. What is the nature and extent of Claimant's disability, if any?[3]

In a Compensation Order issued on March 14, 2012, the ALJ ruled Mr. McNatt is not entitled to workers' compensation benefits because he failed to prove he had sustained an accidental injury on April 17, 2009.

On appeal, Mr. McNatt insists that supporting documents indicate he injured himself at work on April 17, 2009 and that his injury has caused him to remain unemployed. In consideration of his appeal, we have reviewed the Reference Review of Appeal filed April 13, 2012, the Reference Review of Appeal filed April 26, 2012, and the Reference Review of Appeal filed May 7, 2012.

S&S asserts the March 14, 2012 Compensation Order is supported by substantial evidence. It requests we affirm that Compensation Order.

Issue on Appeal

Is the March 14, 2012 Compensation Order supported by substantial evidence and in accordance with the law?

Analysis

Without the assistance of counsel, much of Mr. McNatt's legal argument is difficult to decipher. Mr. McNatt uses his appeal as an opportunity to submit a "reexamination of stated fact that opposed claimant position of the reasoning of conclusion;"[4] however, the CRB does not have the authority to

- Consider any allegations of injuries purportedly sustained in 1994, in 2007, or on any date other than April 17, 2009;
- Consider any claims for cumulative trauma;
- Alleviate any financial hardship created by the denial of Mr. McNatt's claim for benefits;
- Adjudicate entitlement to health care insurance, unemployment benefits, or social security disability benefits;

[3] *McNatt v. Kochhar, Inc./S&S Liquors*, AHD No. 10-417B, OWC No. 669263 (March 14, 2012), p. 2

[4] Reference Review of Appeal filed April 13, 2012, p. 2.

- Provide advice;
- Address unsubstantiated allegations of witness tampering;
- Resolve any wage and hour dispute;
- Decide the merits of any alleged ethical violations; or
- Judge any tort claim or human rights claim.

Nonetheless, "as long as a party has timely filed an Application for Review indicating that an appeal is being taken, the [tribunal responsible for administrative appellate review] must review the Compensation Order in question to ascertain if the findings are supported by substantial evidence and the law has been properly applied."[5]

In fact, the authority vested in the CRB is limited to making a determination as to whether the factual findings of the appealed Compensation Order are based upon substantial evidence in the record and whether the legal conclusions drawn from those facts are in accordance with applicable law.[6] In conducting that analysis, the CRB must uphold a Compensation Order that is supported by substantial evidence, even if there also is contained within the record under review substantial evidence to support a contrary conclusion and even if the CRB might have reached a contrary conclusion.[7]

In addition, the CRB cannot re-weigh the evidence offered at the formal hearing. It can only review the evidence in the existing record without considering any new facts not admitted into evidence at the formal hearing.[8]

In order to be eligible for workers' compensation benefits, a claimant must sustain an accidental injury arising out of and in the course of employment. The requirement of an accidental injury is satisfied when something unexpectedly goes wrong with the human frame,[9] and although there is a presumption of compensability ("Presumption") pursuant to §32-1521(1) of the Act,[10] in order to benefit from the Presumption, the claimant initially must show some evidence of a disability and the existence of a work-related event, activity, or requirement which has the potential to cause or to contribute to the disability.[11] These issues are closely related, but it is only "once an employee offers

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[5] *Short v. Washington Metropolitan Area Transit Authority*, Dir. Dkt. No. 97-20, H&AS No. 87-44A, OWC No. 083016 (August 15, 1997) reversed on other grounds, *Short v. DOES*, 723 A.2d 845 (D.C. 1998).

[6] Section 32-1521.01(d)(2)(A) of the Act.

[7] *Marriott International v. DOES*, 834 A.2d 882, 885 (D.C. 2003).

[8] *Id*.

[9] *WMATA v. DOES,* 506 A.2d 1127 (D.C. 1986)

[10] Section 32-1521(1) of the Act states, "In any proceeding for the enforcement of a claim for compensation under this chapter it shall be presumed, in the absence of evidence to the contrary: (1) That the claim comes within the provisions of this chapter."

[11] *Ferreira v. DOES,* 531 A.2d 651 (D.C. 1987).

evidence demonstrating that an injury was potentially caused or aggravated by work-related activity, a presumption arises that the injury is work-related and therefore compensable under the Act."[12]

There is no presumption that a claimant has experienced the necessary work-related event, activity, or requirement, and in this case, the ALJ determined Mr. McNatt did not sustain his burden of proof on this threshold obligation:

> With respect to the date of accident, Claimant has offered conflicting testimony regarding whether an injury took place on April 17, 2009. During his direct testimony, Claimant testified a number of times that he sustained a back injury on April 17, 2009 after throwing boxes in a dumpster. HT pp. 58, 60 and 62. Claimant also signed the Joint Pre-Hearing Statement and Stipulation Form which identified the date of accident as April 17, 2007. When questioned about the date of accident on cross-examination, Claimant initially stated he sustained an injury on or around April 17, 2009, and he was outside throwing boxes in a dumpster. HT p. 91. Claimant again remarked he was taking the boxes out in a Safeway cart and putting them into a dumpster. HT p. 92. Claimant recanted and offered a different date of accident when defense counsel reminded him about statements he made during a record statement. HT p. 96. Thereafter, Claimant stated he told Ms. Quarles, the claims representative, if he had an accident, it happened in February or March 2009. HT p. 96 and EE 4, pp. 6-7. During her testimony, Ms. Quarles stated she took Claimant's recorded statement in June 2010, and Claimant stated he had accident in either February or March 2009, and he referenced April 17, 2009 as the last date he had worked. HT p. 107. Ms. Quarles testified Claimant stated he was in the basement lifting cases of wine and beer, and he never mentioned being outside at a dumpster. HT p. 107. Claimant's inconsistent statement concerning the date of accident draws into question whether he had an event at work on April 17, 2009 causing him to experience back pain or any other condition.
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> Additionally, Claimant has offered different explanations regarding how the injury occurred on April 17, 2009. Claimant testified he injured his back while throwing boxes in a dumpster on April 17, 2009. HT p. 58. On March 17, 2010, Claimant completed the Notice of Accident Injury or Occupational Disease. Claimant again listed the date of accident as April 17, 2009. Claimant stated the injury occurred in the "Basement of store S&S Liquor's front flood cooler. S&S Liquor's." Claimant did not mention being outside the store at the dumpster, as he testified at the hearing. EE 3, p. 5. With respect to the description of the injury, Claimant wrote the following:
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> > Both of which related to muscle or nerve tissue. Damage to central nervous system causing trauma throughout the body. At any give moment depending on stress or certain pressure of the body.
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> EE 3, p. 5.

[12] *Washington Hospital Center v. DOES,* 744 A.2d 992, 996 (D.C. 2000).

Claimant did not describe an injury to his back. During cross-examination, Claimant appeared to suggest this description relates to an injury occurring in 2007. Claimant testified he wrote the place where the injury occurred was the basement of the store, but that was 2007, the second injury on the job. HT p. 97. Given Claimant's testimony, the record does not contain evidence he had an event on April 17, 2009 in connection with this claim.

Lastly the record reveals Claimant did not receive a diagnosis in connection with any event occurring on April 17, 2009. Claimant testified he did not receive medical treatment following this incident. Claimant stated he only had a conversation with Dr. Paul in 2009 when he had contacted Dr. Paul on May 8, 2009 referencing his injury, and what had taken place on the job. HT p. 50. According to Claimant, Dr. Paul's assistant told him to come in for an appointment in August or go to an emergency room. HT p. 51. Claimant remarked he did not receive medical treatment in May 2009 or August 2009. HT p. 51. Throughout the hearing, Claimant maintained he did not have the financial resources to seek medical treatment. Claimant testified he did not see Dr. Paul following this incident because he did not have the $100.00 fee. HT p. 68. Claimant remarked he took aspirin and Benadryl which caused his mind to relax. HT p. 69. During the hearing, Claimant acknowledged he saw Dr. Paul one time in August 2007. HT pp. 69-70. Claimant further explained nobody treated him in 2009, and Claimant testified he could not see anybody in 2010 because he was unable to pay. HT p. 73.

Claimant submitted medical records from a number of providers in New Mexico, where he began seeking medical treatment in April 2011. These providers failed to diagnosis any condition in connection with the alleged events of April 17, 2009. Claimant received general discharge instructions from Lovelace Westside Hospital on April 19, 2011 referencing his back and hypertension conditions. He subsequently sought treatment on April 27, 2011 with a nurse practitioner, Jennette Cole, where he sought and received a referral for MRI of the cervical and thoracic spines. Ms. Cole's medical history indicated Claimant received the diagnosis of a pinched nerve in 2007, which caused problems with grasping his hands and pinches in his neck. CE 15, O. Dr. Sanchez also referred to a pinched nerve injury from 2007 when he examined Claimant on June 2, 2011. EE 8, p. 38. Dr. Sanchez diagnosed small C2-3 osteophyte, but failed to provide a diagnosis stemming from the alleged work incident of April 17, 2009. Dr. Sanchez did not attribute the C2-3 osteophyte condition to the event of April 17, 2009. EE 8, p. 39. Claimant followed-up with Dr. Rajput on November 2, 2011 at the request of Dr. Sanchez, and her diagnostic testing showed moderate bilateral carpal tunnel syndrome and mild left cubital tunnel syndrome. Dr. Rajput did not relate these findings to any work incident. Essentially, Dr. Aries provided a medical excuse for Claimant on November 29, 2011 indicating Claimant had an exacerbation of back pain stemming from a recent flight to Washington, D.C. While Dr. Aries noted Claimant had a history of back pain, he did not provide any clinical findings or attribute Claimant's symptoms to the work incident of April 17,

> 2011. As such, Claimant has failed to establish he sustained an accidental injury on April 17, 2009 in connection with events of his employment.[13]

The ALJ's findings including the noted contradictions are well-documented by evidence in the record and cannot be disturbed on appeal. The evidence supports the ruling that Mr. McNatt failed to meet his burden to prove by a preponderance of the evidence that he sustained a compensable injury on April 17, 2009.[14]

CONCLUSION AND ORDER

The March 14, 2012 Compensation Order is supported by substantial evidence, is in accordance with the law, and is AFFIRMED.

FOR THE COMPENSATION REVIEW BOARD:

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MELISSA LIN JONES
Administrative Appeals Judge

July 24, 2012
DATE

[13] *McNatt v. Kochhar, Inc./S&S Liquors*, AHD No. 10-417B, OWC No. 669263 (March 14, 2012), pp. 6-8.

[14] S&S had no burden to prove an injury could not have happened on April 17, 2009.